

HOUSE BILL 1106

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2003 Regular Session  
3r2577  
CF 3r2548

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By: **Delegates McHale, Boschert, Bromwell, Cadden, Costa, Moe,  
Sophocleus, Weir, and Zirkin**

Introduced and read first time: February 25, 2003

Assigned to: Rules and Executive Nominations

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A BILL ENTITLED

1 AN ACT concerning

2 **Workers' Compensation - Bloodborne Pathogens - Emergency Responders**

3 FOR the purpose of requiring a certain emergency responder who suffers a certain  
4 exposure to provide a certain notice to the employer and to submit to a certain  
5 laboratory test within a certain period of time; requiring a certain emergency  
6 responder to submit to a certain subsequent laboratory test within a certain  
7 period of time; requiring a certain emergency responder to file a workers'  
8 compensation claim and other information with the Workers' Compensation  
9 Commission within a certain period of time; providing that a claim is barred  
10 under certain circumstances; specifying which employer and insurer are liable  
11 for certain compensation; providing that a certain emergency responder is  
12 entitled to certain benefits; allowing a certain emergency responder to activate a  
13 claim by filing a certain notice with the Commission; providing that a claimant  
14 bears a certain burden of proof; specifying the calculation of compensation and  
15 benefits payable for a certain claim; requiring certain claims to be refiled;  
16 providing that a modification of a certain claim comply with a certain provision  
17 of law; prohibiting payment of accident leave from barring an employer or its  
18 insurer from asserting a certain defense; defining certain terms; and generally  
19 relating to workers' compensation and exposure that may lead to an infection of  
20 an emergency responder, caused by a bloodborne pathogen.

21 BY repealing and reenacting, with amendments,  
22 Article - Labor and Employment  
23 Section 9-101  
24 Annotated Code of Maryland  
25 (1999 Replacement Volume and 2002 Supplement)

26 BY adding to  
27 Article - Labor and Employment  
28 Section 9-713(g), 9-751, and 9-752  
29 Annotated Code of Maryland  
30 (1999 Replacement Volume and 2002 Supplement)

1 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
2 MARYLAND, That the Laws of Maryland read as follows:

3 **Article - Labor and Employment**

4 9-101.

5 (a) In this title the following words have the meanings indicated.

6 (b) "Accidental personal injury" means:

7 (1) an accidental injury that arises out of and in the course of  
8 employment;

9 (2) an injury caused by a willful or negligent act of a third person  
10 directed against a covered employee in the course of the employment of the covered  
11 employee; or

12 (3) a disease or infection that naturally results from an accidental injury  
13 that arises out of and in the course of employment, including:

14 (i) an occupational disease; and

15 (ii) frostbite or sunstroke caused by a weather condition.

16 (C) "BLOODBORNE PATHOGEN" MEANS HEPATITIS B VIRUS (HBV), HEPATITIS  
17 C VIRUS (HCV), OR HUMAN IMMUNODEFICIENCY VIRUS (HIV).

18 [(c)] (D) "Child" includes:

19 (1) an adopted child;

20 (2) an illegitimate child;

21 (3) a posthumous child; and

22 (4) a stepchild.

23 [(d)] (E) "Commission" means the State Workers' Compensation Commission.

24 [(e)] (F) (1) "Compensation" means the money payable under this title to a  
25 covered employee or the dependents of a covered employee.

26 (2) "Compensation" includes funeral benefits payable under this title.

27 [(f)] (G) "Covered employee" means an individual listed in Subtitle 2 of this  
28 title for whom a person, a governmental unit, or a quasi-public corporation is  
29 required by law to provide coverage under this title.

30 (H) "EMERGENCY RESPONDER" MEANS:

1 (1) A PAID FIREFIGHTER, A PAID FIRE FIGHTING INSTRUCTOR, AN  
2 INDIVIDUAL ON DUTY FOR A VOLUNTEER FIRE OR RESCUE COMPANY AS DEFINED  
3 UNDER § 9-234(A)(2) AND (3) OF THIS TITLE, OR AN EMERGENCY MEDICAL SERVICES  
4 (EMS) PROVIDER THAT IS EMPLOYED BY A COUNTY, A MUNICIPALITY, OR THE STATE;

5 (2) A PAID POLICE OFFICER EMPLOYED BY AN AIRPORT AUTHORITY, A  
6 COUNTY, THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION, A  
7 MUNICIPALITY, OR THE STATE; OR

8 (3) A CORRECTIONAL OFFICER AS DEFINED UNDER § 8-201 OF THE  
9 CORRECTIONAL SERVICES ARTICLE.

10 (I) "EXPOSURE" MEANS:

11 (1) PERCUTANEOUS CONTACT WITH BLOOD, SEMEN, OR BLOOD  
12 CONTAMINATED FLUIDS;

13 (2) MUCOCUTANEOUS CONTACT WITH BLOOD, SEMEN, OR BLOOD  
14 CONTAMINATED FLUIDS; AND

15 (3) CONTACT OF AN OPEN WOUND, INCLUDING DERMATITIS,  
16 EXUDATIVE LESIONS, OR CHAPPED SKIN, WITH BLOOD, SEMEN, OR BLOOD  
17 CONTAMINATED FLUIDS.

18 [(g)] (J) "Occupational disease" means a disease contracted by a covered  
19 employee:

20 (1) as the result of and in the course of employment; and

21 (2) that causes the covered employee to become temporarily or  
22 permanently, partially or totally incapacitated.

23 9-713.

24 (G) PAYMENT TO AN EMPLOYEE FOR WORK-RELATED ACCIDENT LEAVE  
25 UNDER § 9-702 OF THE STATE PERSONNEL AND PENSIONS ARTICLE MAY NOT BAR AN  
26 EMPLOYER OR ITS INSURER FROM ASSERTING A FACTUAL OR LEGAL DEFENSE IN  
27 CONTESTING THE COMPENSABILITY OF A CLAIM FILED UNDER §§ 9-751 AND 9-752 OF  
28 THIS SUBTITLE.

29 9-751.

30 (A) (1) THIS SECTION APPLIES ONLY TO A COVERED EMPLOYEE WHO IS AN  
31 EMERGENCY RESPONDER THAT SUFFERS AN EXPOSURE ON OR AFTER JULY 1, 2003,  
32 THAT:

33 (I) IS REQUIRED TO BE RECORDED BY AN EMPLOYER UNDER 29  
34 CFR 1904 "RECORDING AND REPORTING OCCUPATIONAL INJURIES AND ILLNESSES";  
35 AND

36 (II) ARISES OUT OF AND IN THE COURSE OF EMPLOYMENT.

1 (2) UNLESS THE EMPLOYER OR ITS INSURER CAN PROVE, BY MEDICAL  
2 SCIENCE, THAT ANOTHER EMPLOYER OR INSURER IS LIABLE, COMPENSATION  
3 LIABILITY WILL BE ATTRIBUTED TO:

4 (I) THE EMPLOYER IN WHOSE EMPLOYMENT THE EMERGENCY  
5 RESPONDER FIRST SUFFERS AN EXPOSURE THAT LEADS TO AN INFECTION CAUSED  
6 BY A BLOODBORNE PATHOGEN; AND

7 (II) THE INSURER LIABLE FOR THE RISK WHEN THE EMERGENCY  
8 RESPONDER, WHILE EMPLOYED BY THE EMPLOYER, FIRST SUFFERS AN EXPOSURE  
9 THAT LEADS TO AN INFECTION CAUSED BY A BLOODBORNE PATHOGEN.

10 (B) (1) IF AN EMERGENCY RESPONDER SUFFERS AN EXPOSURE THAT MAY  
11 LEAD TO AN INFECTION CAUSED BY A BLOODBORNE PATHOGEN, THE EMERGENCY  
12 RESPONDER SHALL WITHIN 14 DAYS OF THE EXPOSURE:

13 (I) PROVIDE NOTICE TO THE EMPLOYER BY:

14 1. ORAL NOTICE; OR

15 2. SIGNED WRITTEN NOTICE THAT STATES:

16 A. THE NAME AND ADDRESS OF THE EMERGENCY  
17 RESPONDER; AND

18 B. IN PLAIN LANGUAGE, THE TIME, PLACE, NATURE, AND  
19 CAUSE OF THE EXPOSURE; AND

20 (II) SUBMIT TO A LABORATORY TEST TO CONFIRM THAT THE  
21 EMERGENCY RESPONDER WAS NOT INFECTED BY A BLOODBORNE PATHOGEN  
22 BEFORE THE EXPOSURE.

23 (2) WITHIN 6 MONTHS OF THE DATE OF THE EXPOSURE, THE  
24 EMERGENCY RESPONDER SHALL SUBMIT TO A SUBSEQUENT LABORATORY TEST TO  
25 DETERMINE IF THE EMERGENCY RESPONDER HAS BECOME INFECTED BY A  
26 BLOODBORNE PATHOGEN.

27 (3) (I) IF THE EMPLOYER OF THE EMERGENCY RESPONDER DOES NOT  
28 OFFER THE TEST REQUIRED UNDER PARAGRAPH (1) OF THIS SUBSECTION WITHIN 7  
29 DAYS FOLLOWING THE DATE OF THE EXPOSURE, THE EMERGENCY RESPONDER  
30 SHALL, WITHIN THE SUBSEQUENT 7 DAYS, INITIATE THE TEST AT AN APPROPRIATE  
31 FACILITY AND SUBMIT THE COST TO THE EMPLOYER FOR PROMPT PAYMENT.

32 (II) IF THE EMPLOYER OF THE EMERGENCY RESPONDER DOES NOT  
33 OFFER THE TEST REQUIRED UNDER PARAGRAPH (2) OF THIS SUBSECTION, THE  
34 EMERGENCY RESPONDER SHALL INITIATE THE TEST AT AN APPROPRIATE FACILITY  
35 AND SUBMIT THE COST TO THE EMPLOYER FOR PROMPT PAYMENT.

1 (C) (1) UNLESS EXCUSED BY THE COMMISSION UNDER PARAGRAPH (2) OF  
2 THIS SUBSECTION, A CLAIM BY AN EMERGENCY RESPONDER IS BARRED UNDER THIS  
3 TITLE IF:

4 (I) THE EMERGENCY RESPONDER FAILS TO COMPLY WITH THE  
5 PROVISIONS UNDER SUBSECTION (B) OF THIS SECTION;

6 (II) THE RESULT OF THE LABORATORY TEST UNDER SUBSECTION  
7 (B)(2) OF THIS SECTION INDICATES THAT THE EMERGENCY RESPONDER IS NOT  
8 INFECTED BY A BLOODBORNE PATHOGEN; OR

9 (III) THE EMPLOYER PROVIDES PROOF THAT THE EXPOSURE THAT  
10 LED TO THE INFECTION BY A BLOODBORNE PATHOGEN DID NOT ARISE OUT OF AND  
11 IN THE COURSE OF EMPLOYMENT UNDER THE EMPLOYER.

12 (2) IF IT IS ESTABLISHED THAT THE FAILURE TO COMPLY WITH THIS  
13 SUBSECTION WAS CAUSED BY FRAUD OR BY FACTS AND CIRCUMSTANCES  
14 CONSTITUTING AN ESTOPPEL, AN EMERGENCY RESPONDER SHALL SUBMIT TO A  
15 LABORATORY TEST WITHIN 7 DAYS AFTER:

16 (I) THE DATE OF THE DISCOVERY OF THE FRAUD; OR

17 (II) THE DATE WHEN THE FACTS AND CIRCUMSTANCES THAT  
18 CONSTITUTE ESTOPPEL CEASED TO OPERATE.

19 (D) IF THE RESULT OF THE LABORATORY TEST UNDER SUBSECTION (B)(2) OF  
20 THIS SECTION INDICATES THAT AN EMERGENCY RESPONDER IS INFECTED BY A  
21 BLOODBORNE PATHOGEN, THE EMERGENCY RESPONDER SHALL FILE WITH THE  
22 COMMISSION, WITHIN 2 YEARS OF RECEIPT OF THE POSITIVE LABORATORY RESULT:

23 (1) A CLAIM FORM THAT:

24 (I) DESCRIBES THE NATURE AND MANNER OF THE EXPOSURE  
25 THAT LED TO THE INFECTION CAUSED BY A BLOODBORNE PATHOGEN; AND

26 (II) REPORTS COMPLIANCE WITH SUBSECTION (B) OF THIS  
27 SECTION BY THE EMERGENCY RESPONDER;

28 (2) A REPORT OF THE PHYSICIAN ATTENDING TO THE EMERGENCY  
29 RESPONDER AS A CONSEQUENCE OF THE EXPOSURE THAT LED TO THE INFECTION  
30 CAUSED BY A BLOODBORNE PATHOGEN, IF THE EMERGENCY RESPONDER CHOSE  
31 THE PHYSICIAN;

32 (3) AN EXECUTED AUTHORIZATION PREPARED BY THE EMPLOYER OR  
33 ITS INSURER FOR THE RELEASE TO THE EMPLOYER AND ITS INSURER OF MEDICAL  
34 RECORDS FOR THE TREATMENT OF A CONDITION OF THE EMERGENCY RESPONDER  
35 BEFORE OR AFTER THE EXPOSURE; AND

36 (4) AN AFFIDAVIT LISTING THE TREATING PHYSICIANS OF THE  
37 EMERGENCY RESPONDER FOR THE PREVIOUS 20 YEARS.

1 (E) (1) UNLESS EXCUSED BY THE COMMISSION UNDER PARAGRAPH (2) OR  
2 (3) OF THIS SUBSECTION, FAILURE TO FILE A CLAIM IN ACCORDANCE WITH THE  
3 PROVISIONS OF SUBSECTION (D) OF THIS SECTION BARS A CLAIM UNDER THIS TITLE.

4 (2) THE COMMISSION MAY EXCUSE A FAILURE TO FILE A CLAIM IN  
5 ACCORDANCE WITH SUBSECTION (D) OF THIS SECTION IF THE COMMISSION FINDS:

6 (I) THAT NEITHER THE EMPLOYER NOR ITS INSURER HAS BEEN  
7 PREJUDICED BY THE FAILURE TO FILE THE CLAIM; OR

8 (II) THAT THE FILING COULD NOT REASONABLY HAVE BEEN MADE  
9 IN THE EXERCISE OF DUE DILIGENCE.

10 (3) IF IT IS ESTABLISHED THAT A FAILURE TO FILE A CLAIM UNDER THIS  
11 SECTION WAS CAUSED BY FRAUD OR BY FACTS AND CIRCUMSTANCES  
12 CONSTITUTING AN ESTOPPEL, AN EMERGENCY RESPONDER SHALL FILE A CLAIM  
13 WITH THE COMMISSION WITHIN 1 YEAR AFTER:

14 (I) THE DATE OF THE DISCOVERY OF THE FRAUD; OR

15 (II) THE DATE WHEN THE FACTS AND CIRCUMSTANCES THAT  
16 CONSTITUTE ESTOPPEL CEASED TO OPERATE.

17 (4) NOTWITHSTANDING PARAGRAPHS (1), (2), AND (3) OF THIS  
18 SUBSECTION, A CLAIM IS BARRED UNDER THIS TITLE IF AN EMERGENCY RESPONDER  
19 FAILS TO FILE A CLAIM WITHIN 2 YEARS OF RECEIPT OF THE LABORATORY TEST  
20 RESULT DOCUMENTING THE INFECTION CAUSED BY A BLOODBORNE PATHOGEN.

21 (F) (1) EXCEPT AS PROVIDED IN PARAGRAPHS (2) AND (3) OF THIS  
22 SUBSECTION, AN EMERGENCY RESPONDER WHO SUFFERS AN EXPOSURE THAT LED  
23 TO AN INFECTION BY A BLOODBORNE PATHOGEN IS ENTITLED TO MEDICAL  
24 SERVICES AND TREATMENT UNDER THIS TITLE.

25 (2) (I) SUBJECT TO SUBPARAGRAPH (II) OF THIS PARAGRAPH, AN  
26 EMERGENCY RESPONDER WHO SUFFERS AN EXPOSURE THAT LEADS TO AN  
27 INFECTION BY A BLOODBORNE PATHOGEN IS NOT ENTITLED TO MENTAL HEALTH  
28 AND PSYCHOLOGICAL SERVICES AND TREATMENT UNDER THIS TITLE UNTIL THE  
29 EMERGENCY RESPONDER ACTIVATES A CLAIM FOR COMPENSATION UNDER  
30 SUBSECTION (H) OF THIS SECTION.

31 (II) AN AWARD FOR MENTAL HEALTH AND PSYCHOLOGICAL  
32 SERVICES AND TREATMENT MAY BE MADE ONLY FOR SERVICES OR TREATMENT  
33 RECEIVED AFTER THE DATE A CLAIM IS ACTIVATED UNDER SUBSECTION (H) OF THIS  
34 SECTION.

35 (3) AT THE DISCRETION OF THE COMMISSION, COMPENSATION OR  
36 MEDICAL SERVICES MAY BE DENIED IF PROPHYLACTIC TREATMENT WAS OFFERED  
37 TO AND REFUSED BY AN EMERGENCY RESPONDER.

1 (G) AN EMERGENCY RESPONDER IS NOT ENTITLED TO COMPENSATION FOR A  
2 CLAIM FILED UNDER THIS SECTION UNTIL:

3 (1) THE EMERGENCY RESPONDER MANIFESTS PHYSICAL SYMPTOMS OF  
4 AN INFECTION CAUSED BY A BLOODBORNE PATHOGEN; AND

5 (2) THE EMERGENCY RESPONDER ACTIVATES A CLAIM FILED UNDER  
6 SUBSECTION (D) OF THIS SECTION IN ACCORDANCE WITH SUBSECTION (H) OF THIS  
7 SECTION.

8 (H) (1) SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, WITHIN 18  
9 MONTHS AFTER THE DATE WHEN THE FACTS AND CIRCUMSTANCES ARE SUCH THAT  
10 A REASONABLE PERSON KNEW OR SHOULD HAVE KNOWN OF THE MANIFESTATION  
11 OF SYMPTOMS OF AN INFECTION CAUSED BY A BLOODBORNE PATHOGEN, AN  
12 EMERGENCY RESPONDER MAY ACTIVATE A CLAIM FILED UNDER SUBSECTION (D) OF  
13 THIS SECTION.

14 (2) TO ACTIVATE A CLAIM, AN EMERGENCY RESPONDER SHALL:

15 (I) FILE NOTICE TO ACTIVATE THE CLAIM WITH THE COMMISSION  
16 IN ACCORDANCE WITH THE PROCEDURES OF THE COMMISSION; AND

17 (II) PROVIDE SIGNED WRITTEN NOTIFICATION TO THE EMPLOYER  
18 WITHIN 7 DAYS OF THE NOTICE FILED WITH THE COMMISSION TO ACTIVATE THE  
19 CLAIM.

20 (3) A MODIFICATION OF A CLAIM FILED AND ACTIVATED UNDER THIS  
21 SECTION SHALL COMPLY WITH § 9-736 OF THIS SUBTITLE.

22 (I) A CLAIMANT BEARS THE BURDEN OF PROOF TO DEMONSTRATE BY A  
23 PREPONDERANCE OF THE EVIDENCE THAT THE CLAIMANT SUFFERED AN EXPOSURE  
24 THAT LED TO AN INFECTION BY A BLOODBORNE PATHOGEN IN THE COURSE OF  
25 EMPLOYMENT.

26 (J) COMPENSATION FOR A CLAIM UNDER THIS SECTION SHALL BE PAID IN  
27 ACCORDANCE WITH THE EMERGENCY RESPONDER'S RATE OF PAY IN EFFECT ON THE  
28 FIRST DAY THE EMERGENCY RESPONDER IS TEMPORARILY TOTALLY DISABLED FOR  
29 A FULL WORKING DAY DUE TO THE EXPOSURE THAT LED TO AN INFECTION BY A  
30 BLOODBORNE PATHOGEN.

31 9-752.

32 (A) (1) THIS SECTION APPLIES ONLY TO A COVERED EMPLOYEE WHO IS AN  
33 EMERGENCY RESPONDER THAT SUFFERS AN EXPOSURE ON OR AFTER JANUARY 1,  
34 1983, AND ON OR BEFORE JUNE 30, 2003, THAT:

35 (I) IS REQUIRED TO BE RECORDED BY AN EMPLOYER UNDER 29  
36 CFR 1904 "RECORDING AND REPORTING OCCUPATIONAL INJURIES AND ILLNESSES";  
37 AND

1 (II) ARISES OUT OF AND IN THE COURSE OF EMPLOYMENT.

2 (2) UNLESS THE EMPLOYER OR ITS INSURER CAN PROVE, BY MEDICAL  
3 SCIENCE, THAT ANOTHER EMPLOYER OR INSURER IS LIABLE, COMPENSATION  
4 LIABILITY WILL BE ATTRIBUTED TO:

5 (I) THE EMPLOYER IN WHOSE EMPLOYMENT THE EMERGENCY  
6 RESPONDER FIRST SUFFERS AN EXPOSURE THAT LEADS TO AN INFECTION CAUSED  
7 BY A BLOODBORNE PATHOGEN; AND

8 (II) THE INSURER LIABLE FOR THE RISK WHEN THE EMERGENCY  
9 RESPONDER, WHILE EMPLOYED BY THE EMPLOYER, FIRST SUFFERS AN EXPOSURE  
10 THAT LEADS TO AN INFECTION CAUSED BY A BLOODBORNE PATHOGEN.

11 (B) IF AN EMERGENCY RESPONDER SUFFERS AN EXPOSURE THAT LEADS TO  
12 AN INFECTION CAUSED BY A BLOODBORNE PATHOGEN, THE EMERGENCY  
13 RESPONDER SHALL FILE WITH THE COMMISSION ON OR BEFORE DECEMBER 31, 2004:

14 (1) A CLAIM FORM THAT DESCRIBES:

15 (I) THE NATURE AND MANNER OF THE EXPOSURE THAT LED TO  
16 THE INFECTION CAUSED BY A BLOODBORNE PATHOGEN; OR

17 (II) THE NATURE OF THE EMPLOYMENT AND POTENTIAL FOR  
18 SUFFERING AN EXPOSURE THAT LED TO AN INFECTION BY A BLOODBORNE  
19 PATHOGEN;

20 (2) A REPORT BY THE PHYSICIAN ATTENDING TO THE EMERGENCY  
21 RESPONDER AS A CONSEQUENCE OF THE EXPOSURE THAT LED TO THE INFECTION  
22 BY A BLOODBORNE PATHOGEN, IF THE EMERGENCY RESPONDER CHOSE THE  
23 PHYSICIAN;

24 (3) AN EXECUTED AUTHORIZATION PREPARED BY THE EMPLOYER OR  
25 ITS INSURER FOR THE RELEASE TO THE EMPLOYER AND ITS INSURER OF MEDICAL  
26 RECORDS FOR THE TREATMENT OF A CONDITION OF THE EMERGENCY RESPONDER  
27 BEFORE OR AFTER THE EXPOSURE;

28 (4) AN AFFIDAVIT LISTING THE TREATING PHYSICIANS OF THE  
29 EMERGENCY RESPONDER FOR THE PREVIOUS 20 YEARS; AND

30 (5) A TEST RESULT DEMONSTRATING THAT THE EMERGENCY  
31 RESPONDER HAS AN INFECTION CAUSED BY A BLOODBORNE PATHOGEN.

32 (C) (1) ANY PENDING CLAIM FOR EXPOSURE THAT LED TO AN INFECTION  
33 CAUSED BY A BLOODBORNE PATHOGEN THAT HAS NOT BEEN FINALLY  
34 ADJUDICATED AND WAS FILED WITH THE COMMISSION PRIOR TO JULY 1, 2003, SHALL  
35 BE REFILED, WITHOUT PREJUDICE, UNDER THIS SECTION.

36 (2) THE COMMISSION MAY ADOPT REGULATIONS TO FACILITATE  
37 REFILEING UNDER THIS SUBSECTION.

1 (D) (1) EXCEPT AS PROVIDED IN PARAGRAPHS (2) AND (3) OF THIS  
2 SUBSECTION, AN EMERGENCY RESPONDER WHO SUFFERS AN EXPOSURE THAT LED  
3 TO AN INFECTION BY A BLOODBORNE PATHOGEN IS ENTITLED TO MEDICAL  
4 SERVICES AND TREATMENT UNDER THIS TITLE.

5 (2) (I) SUBJECT TO SUBPARAGRAPH (II) OF THIS PARAGRAPH, AN  
6 EMERGENCY RESPONDER WHO SUFFERS AN EXPOSURE THAT LED TO AN INFECTION  
7 BY A BLOODBORNE PATHOGEN IS NOT ENTITLED TO MENTAL HEALTH AND  
8 PSYCHOLOGICAL SERVICES AND TREATMENT UNDER THIS TITLE UNTIL THE  
9 EMERGENCY RESPONDER ACTIVATES A CLAIM FOR COMPENSATION UNDER  
10 SUBSECTION (F) OF THIS SECTION.

11 (II) AN AWARD FOR MENTAL HEALTH AND PSYCHOLOGICAL  
12 SERVICES AND TREATMENT MAY BE MADE ONLY FOR SERVICES OR TREATMENT  
13 RECEIVED AFTER THE DATE A CLAIM IS ACTIVATED UNDER SUBSECTION (F) OF THIS  
14 SECTION.

15 (3) AT THE DISCRETION OF THE COMMISSION, COMPENSATION OR  
16 MEDICAL SERVICES MAY BE DENIED IF PROPHYLACTIC TREATMENT WAS OFFERED  
17 TO AND REFUSED BY AN EMERGENCY RESPONDER.

18 (E) AN EMERGENCY RESPONDER IS NOT ENTITLED TO COMPENSATION FOR A  
19 CLAIM FILED UNDER THIS SECTION UNTIL:

20 (1) THE EMERGENCY RESPONDER MANIFESTS PHYSICAL SYMPTOMS OF  
21 AN INFECTION THAT IS CAUSED BY A BLOODBORNE PATHOGEN; AND

22 (2) THE EMERGENCY RESPONDER ACTIVATES A CLAIM FILED UNDER  
23 SUBSECTION (B) OF THIS SECTION IN ACCORDANCE WITH SUBSECTION (F) OF THIS  
24 SECTION.

25 (F) (1) SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, WITHIN 18  
26 MONTHS AFTER THE DATE WHEN THE FACTS AND CIRCUMSTANCES ARE SUCH THAT  
27 A REASONABLE PERSON KNEW OR SHOULD HAVE KNOWN OF THE MANIFESTATION  
28 OF SYMPTOMS OF AN INFECTION THAT MAY BE CAUSED BY A BLOODBORNE  
29 PATHOGEN, AN EMERGENCY RESPONDER MAY ACTIVATE A CLAIM FILED UNDER  
30 SUBSECTION (B) OF THIS SECTION.

31 (2) TO ACTIVATE A CLAIM, AN EMERGENCY RESPONDER SHALL:

32 (I) FILE NOTICE TO ACTIVATE THE CLAIM WITH THE COMMISSION  
33 IN ACCORDANCE WITH THE PROCEDURES OF THE COMMISSION; AND

34 (II) PROVIDE SIGNED WRITTEN NOTIFICATION TO THE EMPLOYER  
35 WITHIN 7 DAYS OF THE NOTICE FILED WITH THE COMMISSION TO ACTIVATE THE  
36 CLAIM.

37 (3) A MODIFICATION OF A CLAIM FILED AND ACTIVATED UNDER THIS  
38 SECTION SHALL COMPLY WITH § 9-736 OF THIS SUBTITLE.

1 (4) FAILURE TO COMPLY WITH THE PROVISIONS OF THIS SUBSECTION  
2 BARS A CLAIM UNDER THIS TITLE.

3 (G) (1) IN ACCORDANCE WITH THIS SUBSECTION, A CLAIMANT BEARS THE  
4 BURDEN OF PROOF TO DEMONSTRATE BY A PREPONDERANCE OF THE EVIDENCE  
5 THAT THE CLAIMANT SUFFERED AN EXPOSURE THAT LED TO AN INFECTION CAUSED  
6 BY A BLOODBORNE PATHOGEN IN THE COURSE OF EMPLOYMENT.

7 (2) A CLAIMANT SHALL SATISFY THE BURDEN OF PROOF BY PROVIDING:

8 (I) WRITTEN EVIDENCE THAT THE EMERGENCY RESPONDER  
9 NOTIFIED THE EMERGENCY RESPONDER'S HEALTH CARE PROVIDER OF THE  
10 EXPOSURE THAT LED TO AN INFECTION BY A BLOODBORNE PATHOGEN  
11 CONTEMPORANEOUSLY WITH THE TIME OF THE EXPOSURE;

12 (II) WRITTEN OR ORAL EVIDENCE THAT THE EMERGENCY  
13 RESPONDER NOTIFIED THE EMERGENCY RESPONDER'S EMPLOYER OF THE  
14 EXPOSURE THAT LED TO AN INFECTION BY A BLOODBORNE PATHOGEN  
15 CONTEMPORANEOUSLY WITH THE TIME OF THE EXPOSURE; OR

16 (III) EVIDENCE FROM A PERSON WHO WITNESSED THE EXPOSURE  
17 THAT LED TO AN INFECTION BY A BLOODBORNE PATHOGEN TO DEMONSTRATE THAT  
18 THE EMERGENCY RESPONDER'S INFECTION AROSE OUT OF AND IN THE COURSE OF  
19 EMPLOYMENT.

20 (3) A CLAIMANT MAY NOT SATISFY THE BURDEN OF PROOF SOLELY BY:

21 (I) DESCRIBING THE NATURE OF THE EMPLOYMENT AND  
22 POTENTIAL OF SUFFERING AN EXPOSURE THAT MAY LEAD TO A BLOODBORNE  
23 PATHOGEN; OR

24 (II) DENYING OTHER POTENTIAL NONOCCUPATIONAL CAUSES OF  
25 THE INFECTION.

26 (H) (1) ALL BENEFITS PAYABLE UNDER THIS TITLE ARE PROSPECTIVE  
27 ONLY.

28 (2) A CLAIM MAY NOT BE MADE BY A THIRD PARTY AGAINST THE  
29 EMPLOYER OR ITS INSURER FOR PAYMENTS MADE TO OR ON BEHALF OF AN  
30 EMERGENCY RESPONDER PRIOR TO A FILING OF A CLAIM.

31 (I) COMPENSATION FOR A CLAIM UNDER THIS SECTION SHALL BE PAID IN  
32 ACCORDANCE WITH THE EMERGENCY RESPONDER'S RATE OF PAY IN EFFECT ON THE  
33 FIRST DAY THE EMERGENCY RESPONDER IS TEMPORARILY TOTALLY DISABLED FOR  
34 A FULL WORKING DAY DUE TO THE EXPOSURE THAT LED TO AN INFECTION BY A  
35 BLOODBORNE PATHOGEN.

36 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
37 July 1, 2003.